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13 Attorneys for Petitioner: SaveValleyVillage [SVV]

14 LOS ANGELES COUNTY SUPERIOR COURT  
15 FOR THE STATE OF CALIFORNIA

16 **CEQA CASE requires**  
17 **CEQA JUDGE**

18 SAVEVALLEYVILLAGE, an unincorporated ) CASE: BS 157 989  
19 association, ) Assigned to Dept 15  
20 ) Honorable Richard Fruin, Judge  
21 ) Petitioner-Plaintiff, ) Petition Filed September 30, 2015  
22 vs. )  
23 ) SECOND AMENDED PETITION-  
24 THE CITY OF LOS ANGELES, CITY ) COMPLAINT - VERIFIED  
25 COUNCIL OF THE CITY OF LOS )  
26 ANGELES, COUNCILMEMBER GILBERT ) 1. Citizens Petition-Complaint for  
27 CEDILLO, COUNCILMEMBER PAUL ) Injunctive Relief, Private Attorney  
28 KREKORIAN, COUNCILMEMBER BOB ) General Theory, C.C.P, §§ 525,  
526(a), 1085 - 1097, for violation  
of The Brown Act (Gov't Code, §  
54950-54963), Penal Code, § 86,  
City Charter, Council Rules  
2. Declaratory Relief  
3. CEQA Violation For Failure to  
Study Alternatives & CCP § 1021.5

1	COUNCILMEMBER MIKE BONIN,	)	
2	COUNCILMEMBER MITCHELL ENG-	)	
3	LANDER, COUNCILMEMBER MITCH	)	4. CEQA Violation due to violation of
4	O'FARRELL, COUNCILMEMBER JOSE,	)	Specific Plan by Engaging in Piece-
5	HUIZAR COUNCILMEMBER JOE	)	mealization, & CCP § 1021.5
6	BUSCAINO, JOE SALEM, HERMITAGE	)	
7	ENTERPRIS, LLC, DOES 1 THROUGH 50,	)	5. Violation of Statutes, Codes, and
8	INCLUSIVE,	)	regulations, SCAQMD rules
9		)	
10	Respondents-Defendants.	)	
11		)	

**GENERAL ALLEGATIONS**

1. This Petition-Complaint concerns the project at 5258 North Hermitage Avenue, Valley Village, Los Angeles, 91607 (assessor's parcel number 2347-023-001, tract # 9237, Lot 39) with Los Angeles City Council file number 15-0963, Tentative tract No. TT-72725-CN-1A, MND No. ENV-2014-2510-MND [hereinafter The Project which includes but is not limited to Marilyn Monroe's Home - MMH – which is further defined hereinafter.] The Project was given City Council file number 15-0963 and was unanimously approved, without public deliberation, by Respondent-Defendant City Council of the City of Los Angeles on September 2, 2015.

2. For all times herein relevant, Petitioner-Plaintiff Save Valley Village SVV ( also known as The Neighbors & Community of Valley Village) was and is an unincorporated association of residents of Los Angeles County who are concerned about the quality of life in the City of Los Angeles and in particular with the quality of life in the area of the City known as Valley Village. They bring this action due to the on-going unlawful voting pact, as more full described under the First Cause of Action, for injunctive relief and attorney fees under Code of Civil Procedure, §§ 525, 526(a), 1085-1097, Code of Civil Procedure, § 1021.5 to the extent SVV confers a benefit on the public. The

1 Third, Fourth and Fifth causes of action arose from Respondent City's unlawful  
2 voting pact. SVV is informed, believes and thereupon alleges that but for the  
3 unlawful voting pact, the other violations of codes would not have occurred.

4  
5 3. SVV is composed of various residents, citizens and tax payers of the  
6 City of Los Angeles State of California and as such SVV and its members have  
7 an interest in the laws of their City being enforced including that the City  
8 Council follow the laws when conducting its business. Respondent-Defendant  
9 City of Los Angeles acting through Respondent-Defendant City Council of the  
10 City of Los Angeles has a record extending over many years not to follow the  
11 Brown Act's requirement to public deliberation and it has a record starting in  
12 2006 of using an unlawful voting pact to conduct business, as more fully set  
13 forth below under the First Cause of Action. SVV has a real controversy due to  
14 Respondents City's years of adhering to an unlawful voting pact which operates  
15 to the present date

16 4. For all times herein relevant, Respondent City of Los Angeles was  
17 and is a charter city within the State of California and is located at 200 North  
18 Spring Street, Los Angeles, California 90012 [hereinafter The City]. The City  
19 is a public agency under Public Resources Code, § 21063 and authorized and  
20 required by law to hold public hearings in order to determine the adequacy of  
21 and certify the environmental documents prepared by its agencies and  
22 departments and to reject motions, ordinances, projects, MND's, EIR's and  
23 plans which fail to satisfy the requirements of Public Resources Code, § 21000  
24 *et seq.* [CEQA].

25  
26 5. For all times herein relevant, Respondent-Defendant City Council  
27 of City of Los Angeles, which was and is the Lead CEQA agency for the  
28 Project, was and is the legislative body, the governing board and the highest

1 administrative body of The City with its City Hall located at 200 North Spring  
2 Street, Los Angeles, California 90012 [hereinafter The City Council].  
3 Sometimes The City and The City Council are collectively referred to as  
4 Respondents City.

5  
6 6. Each and every councilmember who is named herein as Respondent-  
7 Defendant is sued herein in his/her representative capacity only as the duly  
8 elected official for his/her council district and none is sued herein in his/her  
9 personal capacity. Each councilmember is a proper defendant under the First  
10 Cause of Action, Citizen's Complaint, with respect to each's participation in  
11 unlawful voting agreement. Said councilmembers are not respondents or  
12 defendants under the other causes of action, except the Second Cause of Action  
13 seeks Declaratory Relief that their voting pact is unlawful and each and every  
14 City Councilmember must cease and desist from engaging in it.

15  
16 7. Joe Salem is the Real Party in Interest with respect to the CEQA  
17 violations and he is a defendant under the code violations cause of action in  
18 connection with the demolition of MMH.

19  
20 8. Hermitage Enterpris LLC's role is unknown, and it may be Real-  
21 Party in Interest under CEQA and it may be a defendant for the code violations,  
22 or it may be a fiction. Petitioner alleges *Code of Civil Procedure*, § 128.7 to  
23 undertake discovery to ascertain role, if any, which Hermitage Enterpris, LLC  
24 played. Defendant Joe Salem spells the name of the alleged Limited Liability  
25 Company as "Hermitage Enterpris, LLC."

26  
27 9. As he/it is not part of City government, Real party-in-interest is/are  
28 not liable for the wrongful behavior of The City, of The City Council, or of the  
individual councilmembers, but he/it may not take advantage of nor benefit from  
said wrongful behavior.

1           10. SVV is unaware of the true names and identities of those  
2 Respondents-Defendants sued under the fictitious names DOES 1 through 50,  
3 inclusive.

4  
5           11. Each Respondent and each Defendant was and is the agent, servant  
6 and employee of each remaining Respondent and Defendant was and is acting  
7 within the scope of that agency in doing all the acts wherein alleged and in  
8 failing to perform all the omissions herein alleged.

9  
10           12. Jurisdiction of the Petition falls within the California Superior Court  
11 for the County of Los Angeles under Code of Civil Procedure, §§ 525, 526,  
12 1085-1097 and 187 and Public Resources Code, §§ 21000, et seq., The Brown  
13 Act (Government Code, §§ 54050 *et seq.*), and venue is proper in central district  
14 Code of Civil Procedure, § 394.

15           13. SVV has no plain, speedy, adequate remedy in the ordinary  
16 course of law, since its members and other members of the public will  
17 suffer irreparable harm as a result of The City's violations of CEQA and  
18 other laws. The City Council's approval of The Project also rests on the  
19 failure to satisfy a clear, present, ministerial duty to act in accordance with  
20 those laws. Even when Respondents City are permitted or required by law  
21 to exercise their discretion in approving projects and plans under those  
22 laws, they remain under a clear, present, ministerial duty to exercise their  
23 discretion within the limits of and in a manner consistent with those laws.  
24 Respondents City have had and continue to have the capacity and ability  
25 to approve The Project within the limits of and in a manner consistent with  
26 those laws, but Respondents City have failed and refuse to do so and have  
27 exercised their discretion beyond the limits of and in a manner that is not  
28 consistent with those laws. In the absence of such remedies, The Council's

1 approval of The Project subverts the rule of law.

2  
3 14. SVV has a beneficial right and interest in The City's following the  
4 substantive and procedural law.

5  
6 15. Unless Respondents and Defendants, and each of them, are enjoined  
7 from implementing The Project, SVV and other members of the community will  
8 suffer irreparable harm from which there is no remedy at law.

9  
10 FIRST CAUSE OF ACTION  
11 Petition for Writ of Mandate  
12 *Code of Civil Procedure*, § 1085-1097, 525 et seq.,  
13 Injunctive Relief as to **Unlawful Voting Pact**  
14 Private Attorney General Cause of Action  
15 for Violations of City Council Rules, The Brown Act, Penal Code 86  
16 Against The City Council and the Fifteen (15) Members  
17 of the Los Angeles City Council

18 16. SVV hereby realleges and incorporates by reference into this cause  
19 of action, paragraphs 1 through 15, inclusive, of this Petition-Complaint.

20 17. Each and every councilmember was and is the agent, servant and  
21 employee of each remaining councilmember and was and is acting within the  
22 scope of that agency in doing all the acts wherein alleged and in failing to  
23 perform all the omissions herein alleged.

24 18. As an association of citizens and residents, SVV brings this cause  
25 of action to enjoin The City Council's use of the unlawful voting pact including  
26 but not limited to violations of The Brown Act, Gov't Code, § 54950 et seq.,  
27 Penal Code § 86 and over City Council Rule 48a which provisions are unlawful  
28 as written and as implemented. SVV has standing in that it has composed of

1 citizens of the State of California who have Citizen Standing to prevent illegal  
2 actions of a govern-mental entity when the actions injure a citizen’s interest in  
3 the laws being observed, and that this interest forms the basis of an action by  
4 way of Writ of Mandate seeking to correct and enjoin the wrongful behavior.  
5 SVV seeks to enforce a public right and to compel the public duties that each  
6 councilmember of the Los Angeles City Council deliberate in public (except  
7 when Brown Act authorized closed sessions) and that each councilmember  
8 exercise his/her own vote independent of any type of vote trading or voting  
9 agreement, which is unlawful per Penal Code § 86, be said agreement express,  
10 implied or by custom and trade.

11           19. While the unlawful voting pact applies to more measures than  
12 construction projects in a particular council district, this cause of action  
13 addresses the situation where a councilmember seeks approval of a construction  
14 project in his/her council district as distinguished from a measure which has  
15 construction throughout the entire city, such as Mobility Plan 2035, the  
16 Transportation Element of the General Plan. The term “Council Project” refers  
17 to construction projects such as private condos and apartments which are located  
18 within one council district and the councilmember for that district supports.

19  
20           20. City Council Rule 48 a sates:

21  
22           a. When the Presiding Officer directs the roll call, it shall be  
23 taken by means of the Council's computerized record keeping  
24 system, except where said officer directs that it be taken orally. If  
25 an oral roll call is taken, it shall be taken in alphabetical order,  
26 beginning at the left of the President's chair. When voting with the  
27 Council's computerized record keeping system, each Council-  
28 member shall activate his or her own assigned voting circuit.

          Upon direction of the Presiding Officer, the Clerk shall

1 tabulate the vote in such a manner that the mechanical tabulation of  
2 results occurs simultaneously with the visual display of those  
3 results.

4 Every member present when a question is put shall vote for  
5 or against the same.

6 Whether the roll call has been mechanically tabulated or oral,  
7 it shall be supplemented by the Clerk by counting one "aye" vote  
8 for each member present who did not vote. The Clerk shall  
9 announce the vote.

10 The Presiding Officer shall then announce the disposition of  
11 the item.

12 21. Under the unlawful voting pact and under City Council Rule 48 a,  
13 one vote for a Council Project results in unanimous approval even when only  
14 one councilmember votes. In fact, as Council rule 48a is written and is  
15 implemented it is possible for Council Project for which no councilmember  
16 votes will receive unanimous approval. As a result, each councilmember knows  
17 that any and all violations of rules, ordinances, specific plans, statutes and  
18 procedure can be approved by the offending councilmember voting in favor of  
19 his desired Council Project. As a result, the City Council of Los Angeles  
20 unanimously approves Council Projects about 99% of the time.

21  
22 22. Another unlawful feature of the City Council's unlawful voting pact  
23 is that items which require the City Council's independent review and certi-  
24 fication, such as CEQA projects including those for whom a Mitigated Negative  
25 Declaration has issued, may be placed on the "consent calendar." and all matters  
26 on the consent calendar are approved en masse and unanimously without the  
27 City Council's providing any independent review.

28



1           23. Another aspect of the unlawful voting pact is that deliberations are  
2 not conducted in public. Failure to hold public deliberations violates the Brown  
3 Act. Due to the unlawful voting pact which does not allow councilmembers to  
4 vote NO on any Council Project, any public discussion of any Council Project  
5 is a sham as the decision to approve the Council Project was made before the  
6 City Council meeting in accordance with the unlawful voting pact.

7  
8           24. The consent calendar also violates The Brown Act requirement for  
9 public deliberation as nothing on the consent calendar is subject to public  
10 discussion. The City Council places items on the consent calendar if there has  
11 been prior public comment and that practice is unlawful when the council's  
12 independent review is required.. The existence of prior public comment does  
13 not vitiate the City Council's duty to hold its own public deliberations when its  
14 review is required.

15           25. The victims of this unlawful voting pact are not only Petitioner SSV  
16 but also all citizens of the City of Los Angeles who have a strong public interest  
17 that the City Council's not operate according to unlawful voting pact. Various  
18 City Councilmembers have systematically violated various zoning codes,  
19 various specific plans, CEQA and other statutes, rules, regulations, ordinances  
20 which stand in their way of their achieving some objective, e.g. the construction  
21 of a Council Project which is contrary to law. The unlawful voting pact not only  
22 permits but also encourages wrongdoing as each councilmember knows that  
23 he/she has the power to compel the City Council to ignore, overlook, sanction,  
24 and disregard any and all violations and approve whatever Council Project the  
25 councilmember wants for his/her district.

26  
27           26. More generally, SVV is informed, believes and thereupon alleges  
28 that the unlawful voting pact, which has been employed thousands of times

1 since 2006, has resulted in great harm to the City of Los Angeles and its  
2 citizens. The case of Citizens Coalition Los Angeles v City of Los Angeles, Los  
3 Angeles Superior Court # BS140930 resulted from the same unlawful voting  
4 pact. In that case City Councilmember Eric Garcetti used the unlawful voting  
5 pact to have the City Council unanimously approve the Target Store at the  
6 corner of Sunset Boulevard and Western Avenue in Hollywood despite the fact  
7 that it violated the Specific Plan, SNAP. As the actual and proximate result of  
8 the unlawful voting pact, The Target Project was approved, resulting in  
9 protracted litigation. The construction of the Target Store has been halted by the  
10 courts due to the City's disregard for the law. SVV is informed believes and  
11 thereupon alleges that but for the unlawful voting pact, no councilmember  
12 would insist that the developer construct a Council Project which materially  
13 violated the law and no councilmember would encourage developers to  
14 undertake substantial construction during litigation. SVV is informed, believes  
15 and thereupon alleges that the near 99% certainty that all councilmembers have  
16 that any Council Project which they desire for their district, no matter how much  
17 it violates the law, will be unanimously approved, is the actual and proximate  
18 reason CEQA, Specific Plans, zoning regulations and rules are violated. In  
19 2006, Director of Planning Gail Goldberg warned that the City Council's  
20 allowing developers to set the zoning parameters would result in disaster and the  
21 procedure by which developers are allowed to set the zoning for their projects  
22 is the unlawful voting pact.

23 27. More generally, SVV also alleges that the unlawful voting pact was  
24 the actual and proximate cause of the numerous violations in the Hollywood  
25 Community Plan Update (see Hollywoodians Encouraging Logical Planning v  
26 City of Los Angeles, Los Angeles Superior Court # BS 138370), which  
27 Councilmember Eric Garcetti had unanimously passed on June 19, 2012.  
28 Litigation ensued, and on January 15, 2014, The Honorable Allan Goodman,

1 Los Angeles Superior Court Judge, rejected the Hollywood Community Plan  
2 Update, noting that The City knew in 2011 that its data was fatally flawed and  
3 was wishful thinking, but the City chose not to rectify the EIR. The Hollywood  
4 Community Plan update was passed unanimously due to the existence of the  
5 unlawful voting pact whereby other councilmembers may not vote against a  
6 project in another council district. The harm to City of Los Angeles in general  
7 and to Hollywood has been devastating. Almost two (2) years have passed since  
8 Judge Goodman rejected the Update and reinstated the 1988 Hollywood  
9 Community Plan, whose Commerce Section expired in 2010, and no new EIR  
10 has issued from the City. Meanwhile the City Councilmembers are using the  
11 unlawful voting pact to approve multi-million dollar project after multi-million  
12 dollar project.

13 28. On June 26, 2012, City Watch LA ran an article, *LA City Hall: A*  
14 *Temple to Crimogenics*, which revealed the irreparable harmful impact the  
15 unlawful voting pact was having upon the City of Los Angeles. The warning  
16 about the harm which the unlawful voting pact was having upon Hollywood in  
17 particular was clear:

18  
19 The crimogenic mechanism of LA City Council is this: There's a  
20 corrupt deal amongst the councilmembers not to vote against what  
21 another council member wants in his/her district. When a  
22 councilmember sees the Hollywood Community Plan is based on  
23 frauds, he keeps his mouth shut and votes for it. *LA City Hall: A*  
24 *Temple to Crimogenics*

25 29. The irreparable harm which flows from the unlawful voting pact  
26 was identified by community leaders in December 2013 in the 2020 Commis-  
27 sion Report, *A Time for Truth*. The Time for Truth's opening described the  
28 state of the City of Los Angeles after a decade of the unlawful voting pact:

1 Los Angeles is barely treading water while the rest of the world is  
2 moving forward. We risk falling further behind in adapting to the  
3 realities of the 21st century and becoming a City in decline. For too  
4 many years we have failed to cultivate and build on our human and  
5 economic strengths, while evading the hard choices concerning local  
6 government and municipal finance presented by this new century. Like  
7 the hapless Mr. Micawber in Dickens’ “David Copperfield,” our wishful  
8 response to continued economic decline and impending fiscal crisis has  
9 become a habitual: “Something, my dear Copperfield, will turn up.”

10 The City where the future once came to happen has been living in  
11 the past and leaving tomorrow to sort itself out. As a consequence, Los  
12 Angeles is sinking into a future in which it no longer can provide the  
13 public services to which our people’s taxes entitle them and where the  
14 promises made to public employees about a decent and secure retirement  
15 simply cannot be kept. City revenues are in long-term stagnation and  
16 expenses are climbing. Year by year, our City—which once was a  
17 beacon of innovation and opportunity to the world—is becoming less  
18 livable. *A Time for Truth*, page 1

19 30. Under California law, Non-votes cannot be required to be counted  
20 as Yes Votes. If 7 councilmembers were to break with voting pact and vote No  
21 on one council item and no one else voted, the City Council would be reported  
22 as having passed the item by a 8 to 7 margin. If non-votes were added to  
23 majority of votes, the correct tally would be 0 Yes Votes and 15 No Votes.  
24 Under the unlawful voting pact, if a Council Project receives one Yes Vote from  
25 the sponsoring councilmember and 6 No Votes and 8 non-votes, the Council  
26 Project passes 9-6. By not counting Non-Votes as Yes Votes, the City Council’s  
27 unlawful grants to each councilmember the power to commit as many violations  
28 as he desires to do whatever he pleases and then to cleanse his wrongdoing by  
his voting Yes.

1           31. SVV is informed, believes and thereupon alleges that there is an  
2 agreement among councilmembers not to vote No on any Council Project in  
3 another councilmember’s district. This agreement all Rule 48a to pass projects  
4 unanimously, not based on the merits of the council project, but based on the  
5 unlawful voting pact.

6  
7           32. Penal Code § 86 makes all vote trading among City Council-  
8 members illegal. A fifteen (15) member City Council cannot unanimously agree  
9 99% of the time without there being a voting pact among the councilmembers.  
10 This agreement among councilmember reflects the “you scratch my back and I’ll  
11 scratch your back” agreement where one councilmember agrees not to vote No  
12 on a Council Project in another council district.

13           33. An ancillary feature of the unlawful voting pact is that measures  
14 before the City Council are phrased so as to obtain a Yes Vote because the entire  
15 voting system is set to record Yes votes.

16  
17           34. While a councilmember can manually vote No, almost no council-  
18 member ever votes No. For example, since he took office and until October 14,  
19 2015, Councilmember Ryu voted No only 4 times. That is less than 1% of the  
20 time and he never voted against a project in another district. When asked to vote  
21 against The Project, Councilmember Ryu explained that he defers to the  
22 councilmember in whose district a project is planned. On September 2, 2015,  
23 Councilmember Ryu was counted as part of the unanimous approval of the  
24 consent calendar including the Project.

25  
26           35. SVV seeks to compel members of the Los Angeles City Council to  
27 exercise his/her discretion without influence of any type of voting agreement.  
28

1           36. There is no requirement of Exhaustion of Administrative Remedies  
2 separate and distinct from SVV’s participation of the administrative process in  
3 which it partook and was then subjected it to the unlawful behavior by the City  
4 Council as a custom and practice of the City Council in this case and in  
5 thousands of prior cases. The unlawful voting agreement occurs at the every  
6 end of the administrative process, leaving citizens no administrative procedure  
7 after the City Council votes.

8  
9           37. SVV has no plain, speedy, adequate remedy in the ordinary  
10 course of law, since its members and other members of the public will  
11 suffer irreparable harm as a result of The City’s objectionable conduct. The  
12 City Council's approval of The Project also rests on the failure to satisfy a  
13 clear, present, ministerial duty to act in accordance with those laws. Even  
14 when The City Council is permitted or required by law to exercise their  
15 discretion in approving projects and plans under those laws, the City  
16 Council and its members remain under a clear, present, ministerial duty to  
17 exercise their discretion within the limits of and in a manner consistent with  
18 those laws. The City Council and its members have had and continue to  
19 have the capacity and ability to act within the limits of and in a manner  
20 consistent with those laws, but they have failed and refuse to do so and  
21 have abused their discretion beyond the limits of and in a manner that is not  
22 consistent with those laws. In the absence of such remedies, The Council's  
23 certification of the MND and its approval of The Project will remain in  
24 effect in violation of State law. CEQA also authorizes petitioners to avail  
25 themselves of injunctive relief.

26           38. SVV is entitled to injunctive relief in that The City Council’s voting  
27 behavior was and is unlawful and that each and every councilmember should  
28 cease and desist from participation in the voting agreement. Three years ago the

1 unlawful nature of the voting pact was expressly brought to the City Council's  
2 attention and The City Council was informed that if it did not voluntarily cease  
3 and desist, it would be sued. Since that time, The City Council has continued  
4 to approval projects including this Project, under the unlawful voting agreement.  
5 Without a court order, The City Council and the councilmembers will persist in  
6 voting in accordance with their unlawful voting agreement.

7  
8 39. The unlawful voting agreement precludes any public deliberation  
9 as required by The Brown Act in that the decision to vote Yes for all projects  
10 has already been made in secret outside the eYes and ears of the public. The  
11 practice of the consent calendar also precludes public deliberation by the City  
12 Council. The fact that members of the public had a prior opportunity to make  
13 public comments in committee hearings or in commission hearings or by  
14 submitting written comments for the public record does not vitiate the legal  
15 requirement that The City Council itself have public deliberations.

16 40. Los Angeles City Charter, Rules of The Los Angeles City Council  
17 as Amended (August 2012), (especially Section paragraph 48), The Brown Act  
18 (Gov't Code, § 54950, et seq.), and Penal Code, § 86 require that City Councils  
19 make their decisions in public and that each councilmember physically activate  
20 his vote when the votes are automatically tabulated by machine. The City  
21 Council has a long standing practice covering thousands of items where the City  
22 Council approves items based on a voting agreement whereby each council-  
23 member will not vote against Council Projects which any councilmember  
24 desires for his/her district. Penal Code § 86 outlaws the voting pact due to its  
25 underlying agreement that each councilmember will defer to the desire of the  
26 councilmember in whose district a project is planned and in return each  
27 councilmember expects the same consideration for projects in his/her district.

1           41. SVV is informed, believes and thereupon alleges that the City  
2 Council’s vote tabulator automatically votes Yes for councilmembers who do  
3 not physically activate their vote including when they are physically close  
4 enough to vote Yes or No. In the alternative, the clerk manually counts non-  
5 votes as Yes Votes. This is a distinction without a difference. SVV is informed,  
6 believes and thereupon alleges, that councilmembers are familiar with Rule 48a,  
7 they know that by their not voting, they are participating in the unlawful voting  
8 agreement.

9  
10           42. The Brown Act requires that all deliberations be conducted openly  
11 and when the votes have been pre-determined by the secret voting agreement,  
12 there are no open and public deliberations. Any public discussions would be  
13 “for show,” and would conceal and cover-up the voting agreement in violation  
14 of Penal Code, § 86.

15           43. In addition to the general unlawful nature of approving any project  
16 on its “consent calendar,” when the City Council, as the lead agency, certifies  
17 and adopts an CEQA document, the City Council and each of its council-  
18 members fail to satisfy their CEQA duties of independent review. The consent  
19 calendar prevents The City Council from performing its non-delegable duties to  
20 review, evaluate, and thereupon certify the CEQA documents. The use of the  
21 consent calendar is one aspect of the unlawful voting agreement whereby each  
22 councilmember votes Yes for any project in another council district, knowing  
23 that the voting agreement requires the other councilmembers to vote Yes for any  
24 project within his/her council district. [The consent calendar refers to those  
25 items which the City Council lumps together on the grounds that public  
26 comment has already been provided to the public. All items which remain on  
27 the consent calendar are then unanimously passed without any City Council  
28 review. SVV is informed, believes and thereupon alleges, that 100% of all



1 Council Projects which are approved on the consent calendar are approved  
2 without public deliberation by the City Council and are passed unanimously  
3 even if no councilmember votes Yes.

4  
5 44. The unlawful voting agreement encourages developers and the  
6 councilmembers for the district wherein their projects are located (1) to ignore  
7 the law, (2) to obtain permits by misrepresentation, (3) to destroy structures after  
8 a court has expressly ordered the developer not to demolish the structure, (4) to  
9 construct buildings such as retail stores knowing that their Projects are in blatant  
10 violation of Specific Plans while the courts are adjudicating the merits, (5) to  
11 ignore CEQA, and (6) to engage in a variety of other violations which the fertile  
12 human imagination can devise. Because the desire of one councilmember  
13 determines how the entire City Council must vote on any project, violations  
14 abound throughout the City of Los Angeles. The City Council has a record of  
15 unanimously approving Council Projects roughly 99% of the time, a statistic  
16 which is impossible without a voting agreement. [SVV uses the statistic of  
17 “roughly 99% of the time” to be cautious, but as far as SVV has been able to  
18 ascertain, no Council Project which a councilmember has received a single No  
19 vote since January 1, 2015.] Public Policy requires that The City Council be  
20 enjoined from engaging in this behavior.

21 45. Copies of this Second Amended Petition and Complaint are being  
22 served upon the Attorney General of the State of California and the District  
23 Attorney’s office of the County of Los Angeles.

24  
25 46. SVV and members of the general public seek an injunctive relief  
26 restraining the City Council of the City of Los Angeles and its individual  
27 members from engaging in any voting agreement and from conducting non-  
28 public deliberations, except as authorized by The Brown Act.

1           47. Furthermore, when CEQA is involved, the practice to count a non-  
2 vote as a Yes vote makes it impossible for anyone to know how many  
3 councilmembers, if any, actually exercised their independent discretion to  
4 approve the CEQA Project. Automatic voting is not a councilmember's  
5 exercising his/her own discretion to vote. Under this practice, projects could  
6 receive unanimous approval without any councilmember actually voting Yes.

7  
8           48. The present voting procedure and mechanism should be enjoined.  
9 The Court may enjoin the current system or any portion of it, and the Court may  
10 order that The City and The City Council devise a new voting system without  
11 directing The City and The City Council how to devise a new voting system.  
12 This Court may issue a Preliminary Injunction to prohibit selected aspects of  
13 this unlawful voting system, while considering a wider permanent injunction on  
14 the objectionable behavior. This Court should set a series of Returns so that it  
15 may closely monitor The City's and the City Council's development of a new  
16 voting system.

17           49. SVV is entitled to reasonable attorney fees and costs under Code of  
18 Civil Procedure, § 1021.5 to the extent their action protects a public right or  
19 confers a benefit on the public over and above Petitioners' personal interests.

20  
21                                   SECOND CAUSE OF ACTION  
22                                   Declaratory Relief  
23                                   Against the City and the City Council

24           50. SVV hereby realleges and incorporates by reference into this cause  
25 of action, paragraphs 1 through 49, inclusive, of this Petition-Complaint.

26  
27           51. An actual case and controversy has developed between SVV, on the  
28 one hand, and Respondents City, on the other hand, over the voting system

1 which The City Council has used since 2006 and which the City Council used  
2 on September 2, 2015.

3  
4 52. The City and real party-in-interest are attempting to move ahead  
5 with the construction of the Project based upon the September 2, 2015  
6 unanimous approval. As alleged under the first cause of action, The City and  
7 other developers have constructed significant projects during litigation, e.g. The  
8 Sunset-Gordon Project and the Target Store in Hollywood. Thus, the parties  
9 need a prompt declaration of rights to guide their action in the next few weeks  
10 and months.

11 53. SVV sees no genuine dispute over the facts, i.e. The City Council  
12 placed the Project on the consent calendar for the September 2, 2015 City  
13 Council session and the Project was unanimously approved without any public  
14 deliberation together with the other items on the consent calendar.

15  
16 54. SVV seeks a judicial determination that the procedure used to  
17 approve The Project (council file #15-0963) was contrary to law, and thus, the  
18 Project's approval is null and void.

19  
20 55. SVV asserts a number of factors made the approval of the Project  
21 (council file #15-0963) null and void.

22  
23 56. The Brown Act requires public deliberation. No item on the consent  
24 calendar received any public deliberation.

25  
26 57. City Council Rule 48a operates so that the consent calendar is  
27 reported as unanimously adopted even if no councilmember actually voted Yes.

1           58. Under City Council Rule 48a, the clerk counts all non-votes as Yes  
2 votes.

3  
4           59. Under the City Council Rule 48a, the clerk counts all non-votes as  
5 Yes Votes even when a majority of the quorum failed to vote.

6  
7           60. Under the City Council Rule 48a, if the councilmember who desires  
8 a project votes Yes and all other councilmembers fail to vote, their non-votes are  
9 counted as Yes Votes, and the council clerk reports that the City Council  
10 unanimously adopted the item.

11           61. When The City is a lead agency on a CEQA matter, it has a duty to  
12 independently review and adopt the CEQA documents. When an item is placed  
13 on the consent calendar, there is no review and no independent certification of  
14 CEQA Council Project or of any the Mitigated Negative Declaration.

15  
16           62. An agreement not to vote No on a Council Project is a form of vote  
17 trading which is unlawful by Penal Code, § 86, and unanimous voting about  
18 99% of the time shows that there is an agreement not to vote No on a Council  
19 Project in another district.

20  
21           63. The City Council has used this unlawful voting system for years  
22 resulting in unanimous agreement about 99% of the time and the City Council  
23 refuses to cease and desist from engaging in this practice. As alleged above,  
24 since 2006, when Penal Code, § 86 went into effect, various city officials and  
25 citizens have complained about the harm the unlawful voting pact was posing  
26 to the City and the harm which the unlawful voting pact has caused to the City.  
27 Nonetheless, Respondents City will not cease and desist from this course of  
28 unlawful behavior.

1           64. The most efficacious route for real-party-in-interest to move ahead  
2 is to have the approval of the Project voided as soon as possible so that real  
3 party-in-interest can forthwith initiate a proper procedure to construct an  
4 appropriate project. Without a prompt declaration of rights, real party-in-  
5 interest faces significant losses and troubles typical of any developer whose  
6 project is subject to litigation, e.g. construction loans expire, funds are tied up  
7 in a project which cannot proceed and cannot be modified, the site falls into  
8 blight attracting homeless and becomes used as a trash bin.

9  
10           65. SVV requests that this court declare the City Council’s September  
11 2, 2015 adoption of the Project (council file # 15-0963) is null and void as it was  
12 the product of an unlawful voting pact for the reasons stated above.

13           66. SVV requests that this court declare the practice of placing CEQA  
14 council Projects on the “consent calendar” is unlawful under CEQA.

15  
16           67. SVV requests that this court declare the practice of placing CEQA  
17 council Projects on the “consent calendar” is unlawful under The Brown Act.

18  
19           68. SVV requests that this court declare the practice of placing CEQA  
20 council Projects on the “consent calendar” is unlawful under Penal Code § 86.

21  
22           69. SVV is entitled to reasonable attorney fees and costs under Code of  
23 Civil Procedure, § 1021.5 to the extent their action protects a public right or  
24 confers a benefit on the public over and above Petitioners’ personal interests.

25  
26                                    **THIRD CAUSE OF ACTION**  
27                                    **Violation of California’s Environmental Quality Act (CEQA)**  
28                                    **Public Resources Code, § 21000, *et seq.***  
                                  **The Failure to Have Draft Environmental Report on Alternatives to**

1                               Demolition of Marilyn Monroe’s Home  
2                               Against The City and The City Respondents  
3                               Joe Salem and Hermitage Enterpris, LLC as real parties in interest

4           70.   SVV hereby realleges and incorporates by reference into this cause  
5 of action, paragraphs 1 through 69, inclusive, of this Petition-Complaint. Where  
6 the prior allegations do not form required elements of this cause of action, they  
7 are informational to provide context to this cause of action.

8  
9           71.   Due to the unlawful voting pact alleged under the First Cause of  
10 Action, The City Council failed publicly deliberate on The Project as required  
11 under The Brown Act and the City Council failed to use its independent review  
12 to certify the use of a Mitigated Negative Declaration, The Project has never  
13 been approved. Whether or not the prior CEQA steps were all wrong or all  
14 perfect, the City Council’s use of the unlawful voting pact leaves The Project  
15 with no approval. In the alternative, the CEQA process was fatally flawed for  
16 the reasons set forth below as to the demolition of Marilyn Monroe’s Home  
17 [MMH].

18           72.   Petitioners have satisfied each and every exhaustion-of-remedies  
19 requirement that must be satisfied in order to maintain this proceeding.  
20 California Public Resources Code, §§ 21177(a), § 21177(b) The City Council's  
21 purported approval of The Project is now final.

22  
23           73.   SVV and its members made many comments on The Project during  
24 the administrative proceedings and has exhausted all Administrative Remedies.

25  
26           74.   The History of Marilyn Monroe’s Home [MMH]

27  
28           The property located at 5258 Hermitage Avenue, Valley Village, Los

1 Angeles, California 91607 (assessor's parcel number 2347-023-001, tract #  
2 9237, Lot 39) contained structures of historical importance for Valley Village,  
3 for the San Fernando Valley, for the City of Los Angeles, for "Hollywood"  
4 when used to refer to the entertainment industry in general, for State of  
5 California and for the world in that it was the home of Marilyn Monroe, (then  
6 named Norma Jean Dougherty), at a crucial stage in her life. Between 1944 and  
7 1945, Marilyn was living with her in-laws, while her husband James Dougherty  
8 was in the Navy. She was living in this house as "Norma Jean" when she was  
9 discovered and soon transformed into Marilyn Monroe. Norma Jean's mother-  
10 in-law, Ethel Dougherty, had found her a job at Radio Plane Munitions Factory  
11 aircraft plant where she sprayed parts with fire retardant and inspected  
12 parachutes. When Capt. Ronald Reagan needed a model for morale publicity,  
13 Reagan's photographer David Conover selected Norma Jean. That was the  
14 launching pad for her entire career. One of the most amazing aspects of this tiny  
15 home at 5258 N. Hermitage in Valley Village is that it captures the essence of  
16 Marilyn's life during a crucial transforming stage. While Norma Jean was born  
17 at County Hospital in Lincoln Heights, Marilyn Monroe's career was born while  
18 living in this house. Without her working at the munitions factory and without  
19 Capt. Reagan's need for a morale-boosting model, the world may have never  
20 had Marilyn Monroe. Norma Jean's small, old home embodied the essence of  
21 the Hollywood dream -- "being discovered."

22 75. Nothing else conveys her rise to fame as much as seeing the home  
23 where she lived when she was first chosen for stardom. Her career began to take  
24 off while living in this home, and like the rest of America, she was emerging  
25 from the hard times of the Great Depression followed by the World War to a  
26 near era of freedom and prosperity. All this information was available and place  
27 in the public record by before The City's PLUM hearing in September 1, 2015.

1           76. In addition, on April 16, 2015, Charles Fisher, on behalf of Friends  
2 of Norma Jean had submitted an extensively detailed 75 page report about the  
3 historical significance of MMH under the title The Doughertyeerty House to  
4 Respondent City. Starting on page 7, Charles Fisher’s report described the life  
5 of Norma Jean Dougherty who was soon to become known to the world as  
6 Marilyn Monroe. The structures on the Project site are separately referred to  
7 herein as Marilyn Monroe’s Home [MMH] as the historical significance  
8 pertained structures and not necessarily to the land itself. At times, the historical  
9 significance adheres to the land, as can be the situation where a significant event  
10 such as a major battle in the Revolutionary War or the Civil War took place.  
11 These facts and other observations about MMH were more than sufficient to  
12 show a Fair Argument for The City to conduct a Draft EIR.

13           77. On November 10, 2014, The City had issued a Notice of Intent To  
14 Adopt A Mitigated Negative Declaration [MND], and on September 2, 2015,  
15 The City Council purportedly adopted said MND. After the November 10, 2014  
16 Notice of Intent, SVV among others objected and appealed the MND through  
17 all the required administrative phases and many persons made comments both  
18 orally and in writing for the public record about the reasons an EIR was required  
19 to study the reasonable range of alternatives with respect to MMH and The  
20 Project. In issuing the MND, The City failed to gather pertinent data when the  
21 information was easily available. The City also provided materially misleading  
22 information which it knew to be misleading when it wrote the MND. *Inter alia*,  
23 The City wrote:

24  
25           The subject site is currently developed with two single-family  
26 buildings that were built in 1940s. They are not identified as a site  
27 or an area of historical significance or cultural monument (ZIMAS).  
28 Although the structure is more than 50 years old, (built in 1940s),  
the structure is not designated as a historic resources or



1 historic/cultural monument (SurveyLA Field Survey Findings and  
2 Report for West Los Angeles, City of Los Angeles Office of  
3 Historic Resources). Therefore impacts to historic resources are  
4 anticipated to be less than significant. *November 7, 2014 ENV-  
2014-2510-MND Page 19 of 32*

5  
6 78. *Public Resources Code* § 21102 prohibits the approval of a project  
7 “if there are feasible alternatives . . . available which would substantially lessen  
8 the significant environmental effects of such projects.” One obvious alternative  
9 would have been to relocate MMH so that it could be preserved within a proper  
10 historic context.

11 79. SVV is informed, believes and thereupon alleges that The City had  
12 overwhelming evidence no later than April 16, 2015 that under Pub. Res. Code,  
13 § 15064.5(s)(4), MMH qualified for CEQA EIR. CEQA requires the study of  
14 reasonable range of alternatives and within that reasonable range could be the  
15 preservation of the entire property with no alterations whatsoever and within the  
16 reasonable range of alternatives would be the moving of these small single story  
17 structures to another location as has been done with many other historic homes  
18 in Los Angeles. When substantial new information becomes available prior to  
19 the final adoption of the MND and approval of the Project, The City is under a  
20 mandatory CEQA duty to recognize the new information and issue an NOP for  
21 a Draft EIR. Although The City new ab initio sufficient information to satisfy  
22 the Fair Argument requirement of a Draft EIR, that evidence continued to  
23 increase during the Administrative Process as more and more evidence was  
24 submitted.

25  
26 80. Prior to The City Council’s purportedly approving The Project, The  
27 City Council knew that the demolition had not been legal in that: There was a  
28 Fair Argument to study MMH under CEQA and consider the range of

1 reasonable alternatives; The City omitted material data from the MND; Salem’s  
2 application for demolition permit was materially false and misleading; Salem  
3 had admitted in writing that he had demolished MMH without obtaining an  
4 asbestos report until after MMH had been demolished, the debris removed, and  
5 the area cleaned.

6  
7 81. On June 15, 2015 Joe Salem demolished MMH. The demolition  
8 was three days prior to the Cultural Commission hearing which was set for  
9 Thursday, June 18, 2015 and the demolition was accomplished contrary to law  
10 as more fully set forth in the Fourth Cause of Action.

11 82. The demolition of MMH was contrary to law including but not  
12 limited to the Los Angeles Municipal Code, the Los Angeles Administrative  
13 Code, SCAQMD Rule 1043, there was no posting on the site of the demolition  
14 for either the 30 day notice period or the shorter 24 hour period. When it  
15 purportedly approve the Project, The City Council knew, or should have known,  
16 that the demolition had been contrary to law.

17  
18 a. The age of MMH was such that the presence of asbestos  
19 was highly likely. Salem admitted and the City Council knew that  
20 Salem admitted that it had not followed SCAQMD Rule 1043 in  
21 that, inter alia, it did no pre-demolition inspection for asbestos, or  
22 follow other material requirements of Rule 1403.

23  
24 b. Salem demolished MMH without taking required  
25 precautions for asbestos causing substantial dust to drift onto  
26 neighboring properties and into nearby dwellings.

27  
28 c. Salem made material misrepresentation(s) in the appli-

1 ation for demolition by concealing the historic nature of MMH in  
2 that he denied that Public Res Code, § 15064.5 was applicable.

3  
4 d. Salem failed to provide The City the required pre-  
5 demolition documentation or obtain the require pre-demolition  
6 inspections and The City was aware of these violations.

7  
8 e. Salem failed to obtain the proper pre-demolition  
9 inspections.

10  
11 f. When Salem demolished MMH, he did not use a  
12 contractor who was licensed to perform that type of demolition and  
13 he did not use his own personnel as he had represented in the  
14 demolition application.

15  
16 g. When Salem had MMH demolished, he knew that the  
17 Cultural Commission was set to hear the cases about the historic  
18 nature of MMH and demolition was designed to make any historic  
19 designation moot.

20  
21 h. Salem demolished MMH without due care for the health  
22 and safety of the immediate neighbors who had dust and fine  
23 particulate matter infiltrate their homes and settle on their furniture.

24  
25 i. Salem's violations vitiated any demolition rights which  
26 he may have obtained from The Los Angeles City's Department of  
27 Building and Safety.

28 83. On or about September 2, 2015, The City Council purportedly

1 adopted The Project, as City Council item # 15-0963, while ignoring the  
2 unlawful demolition which required The City to place a moratorium on any  
3 construction at the site.

4  
5 84. The City Council purportedly adopted City Council item # 15-0963  
6 on its consent calendar which means that the City Council violated its statutory  
7 CEQA duties by delegating its non-delegable CEQA duties (CEQA Guideline  
8 § 15025) to review and consider or approve a negative declaration prior to  
9 approving a project.

10  
11 85. The purported adoption of The Project was done in contravention  
12 of Penal Code, § 86 and The Brown Act (Gov't Code, § 54950 et seq.,) and City  
13 Council Rule 48, (1) there was no public deliberation lead agency and (2) in  
14 that it was unanimously approved pursuant to an unlawful voting agreement  
15 which has existed among all the Councilmembers for several years whereby  
16 projects in a specific council district and favored by the councilmember for that  
17 specific district receive unanimous approval without the other councilmembers'  
18 giving the merits of the project any independent consideration.

19  
20 86. SVV is informed, believes, and thereupon alleges, The City may  
21 have filed its Notice of Determination Notice of Adoption of MND with The  
22 County of Los Angeles which may have been posted for the statutory thirty (30)  
23 days. The earliest day that the thirty (30) day period could end would be  
24 October 2, 2015.

25  
26 87. On September 18, 2015, SVV served by mail and email a Notice of  
27 Commencement of this Action on Respondents and Defendants prior to the  
28 filing of this Petition.

1           88. SVV is familiar with the CEQA condition subsequent to furnish the  
2 California State Attorney General a copy of this Petition within ten (10) days of  
3 their filing the same.

4  
5           89. SVV has standing as entities beneficially interested in the issuance  
6 of the requested writ of mandate because The City ignored the fair argument that  
7 the structures on the property required a EIR due to their historical nature. The  
8 City used the wrong standard in purportedly adopting a MND by asserting that  
9 Marilyn Monroe’s Home lacked historic value because she was not highly  
10 productive at the time she lived there. There is no requirement that a historic  
11 structure have housed the person during a productive period of their career. The  
12 basis of denying an EIR and purportedly adopting the MND was incorrect as a  
13 matter of law.

14           90. Similar to the rest of the nation, Marilyn Monroe was launched to  
15 great success from this modest home. MMH which had not been significantly  
16 altered since the time she lived there was like snapshot of American life in 1948  
17 – only it was the real thing; not just a picture of it. These historic facts about the  
18 nation, about the San Fernando Valley, about the movie industry and about  
19 Marilyn Monroe were known to The City, when it ignored the Fair Argument  
20 that an EIR was required due to structure’s historic nature.

21  
22           91. The City forged ahead in the processing of the Mitigated Negative  
23 Declaration [MND] and related documents based on fundamentally flawed  
24 factual premises which resulted in a failure to proceed in the manner required  
25 by law.

26  
27           92. The City prepared a Proposed Mitigated Environment Declaration  
28 which The City knew or should have known was materially false and misleading

1 in that it denied that destruction of MMH would “cause a substantial adverse  
2 change in the significance of a historical resource as defined in [Pub Res Code]  
3 § 15064.5.” The fact that a resource is not listed in, or determined to be eligible  
4 for listing in, the California Register of Historical Resources, or was not  
5 included in a local register of historical resources (pursuant to section 5020.1(k)  
6 of the Public Resources Code), nor identified in an historical resources survey  
7 (meeting the criteria in section 5024.1(g) of the Public Resources Code) does  
8 not preclude a lead agency from determining that the resource may be an  
9 historical resource as defined in Public Resources Code sections 5020.1(j) or  
10 5024.1. The City’s proceeding by way of a MND deprived the public of the  
11 required opportunity to make significant comments on the historic value of  
12 MMH.

13 93. The CEQA violation led to MMH being demolished, rather than  
14 moved to another location. The historic nature was primarily within the  
15 physical structure itself and preserving the structure was not inconsistent with  
16 another use of the property. CEQA requires a Draft EIR to study alternatives,  
17 one of which would no doubt have been the feasibility of moving MMH to  
18 another location which might have been more accessible to the public.

19  
20 94. There was loud and continuous objections to The City’s failure to  
21 prepare an EIR. CEQA placed a duty on The City to *sua sponte* reverse the  
22 Planning Department decision not to preform an EIR when the additional  
23 information was received from members of the public.

24  
25 95. The City Council’s approval of The Project needs to be set aside and  
26 remanded to The City to decide what action to take in light of the failure to issue  
27 an Notice of Preparation for a Draft EIR and its failure to conduct a Draft and  
28 final EIR, and in light of the destruction of MMH and the other issues of

1 illegalities and code violations raised herein. The standard penalty for an  
2 unlawful demolition is a five (5) year moratorium on any construction, except  
3 for construction which restores the structures.

4  
5 96. SVV requests the MND be declared null and void on the grounds  
6 that MND was not considered in public deliberation as required by the Brown  
7 Act which deprived The City Council of the ability to publicly deliberate on the  
8 impact on the Project of the unlawful demolition. As set forth in the First Cause  
9 of Action, the City Council's purported approval was due to a unlawful voting  
10 agreement so that there was no actual approval of The Project by the lead  
11 agency.

12  
13 97. In particular the unlawful voting agreement made all approvals of  
14 the Project (council file # 15-0963) null and void including the MND, and the  
15 Tract Map, and all other aspects of the September 2, 2015 purported approval  
16 by The City Council.

17 98. SVV is entitled to reasonable attorney fees and costs under Code of  
18 Civil Procedure, § 1021.5 to the extent their action protects a public right or  
19 confers a benefit on the public over and above Petitioners' personal interests.

20  
21  
22  
23 FOURTH CAUSE OF ACTION  
24 Violation of California's Environmental Quality Act (CEQA)  
25 Public Resources Code, § 21000, *et seq.*  
26 Fair Argument For Draft EIR Due to Piecemealization  
27 Violation of Valley Village Specific Plan  
28 Against The City and The City Respondents  
Joe Salem and Hermitage Enterpris, LLC as real parties in interest

1           99. SVV hereby realleges and incorporates by reference into this cause  
2 of action, paragraphs 1 through 98, inclusive, of this Petition-Complaint. Where  
3 the prior allegations do not form required elements of this cause of action, they  
4 are informational to provide context to this cause of action.

5  
6           100. Due to the unlawful voting pact alleged under the First Cause of  
7 Action, The City Council failed publicly deliberate on The Project as required  
8 under The Brown Act and the City Council failed to use its independent review  
9 to certify the use of a Mitigated Negative declaration, the Project has never been  
10 approved. Whether or not the prior CEQA steps were all wrong or all perfect,  
11 the City Council's use of the unlawful voting pact leaves the Project with no  
12 approval. In the alternative, the CEQA process was fatally flawed for the  
13 reasons set forth below as to the piecemealization of the Specific Plan.

14           101. The Specific Plan for the Valley Village area of North Hollywood  
15 Community Plan (VV Specific Plan) was adopted on February 23, 1993 and has  
16 not been altered since that date.

17  
18           102. VV Specific Plan states under WHEREAS #2:

19  
20                   Valley Village, a predominately single-family neighborhood,  
21 is experiencing transitional development, specifically multi-family  
22 and commercial development near traditionally single-family zoned  
23 neighborhoods.

24  
25           103. VV Specific Plan states under WHEREAS #4:

26  
27                   The multiple-family and commercial development allowed by  
28 current zoning will cause adverse impacts for adjacent residential



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neighborhoods such as excessive traffic, parking on adjoining residential streets, inappropriate and undesirable use such as commercial uses that are incompatible with the surrounding area, blocked views and developments of a proportion and scale that is incompatible with adjoining residential neighborhoods.

104. VV Specific Plan states under Sec 2, ¶ D:

To ensure that all residential and commercial uses are consistent with the general character of the existing single family developments with the Valley Village area of the North Hollywood Community plan area.

105. VV Specific Plan states under Sec 2, ¶ E:

To preserve the quality and existing character of the Valley Village area

106. VV Specific Plan states under Sec 2, ¶ G:

To adequately buffer single-family residential uses from adjacent multiple residential and commercial development

107. VV Specific Plan states under Sec 2, ¶ H:

To preserve stable single family neighborhoods presently zoned for single family uses.

108. Valley Village’s character of a balance between multi-family and

1 single-family homes is being destroyed by a process termed Piecemealization.  
2 As used herein, Piecemealization refers to the practice of focusing on each  
3 project without any regard for the cumulative impacts which many such projects  
4 are having on the goals and purposes of VV Specific Plan.

5  
6 109. VV Specific Plan, which is part of the City’s General Framework,  
7 due to its being part of the North Hollywood Community Plan, may not be  
8 ignored nor implemented in a manner which is inconsistent with or hostile to the  
9 VV Specific Plan and the General Plan Frame. Such piecemeal approvals of  
10 subsequent projects, where each one standing alone, does not violate the VV  
11 Specific Plan, operates as a de facto amendment to the VV Specific Plan.  
12 Furthermore, the piecemealization makes VV Specific Plan de facto in conflict  
13 with the general principles of the General Plan.

14  
15 110. The proper manner to amend a Specific Plan is to have a formal  
16 Notice of Preparation [NOP] issued and then a CEQA Draft EIR performed and  
17 to adopt or reject the amendment to the Specific Plan in accordance with CEQA.

18  
19 111. When a Fair Argument exists that piecemealization is occurring  
20 contrary to the goals of VV Specific Plan, The City has an affirmative duty  
21 under CEQA not to proceed by way of a MND but rather to issue an NOP for  
22 a Draft Environment Report [Draft EIR]. The City did not adhere to CEQA in  
23 purportedly adopting a MND rather than authorizing a Draft EIR.

24  
25 112. Pursuant to CEQA, whenever The City learns of additional material  
26 information, it may not persist in its MND, but rather has the affirmative duty  
27 to retract the MND and issue a NOP for a Draft EIR. The lead agency may not  
28 remain in conscious ignorance of what is occurring within its own territory.

1 113. Due to The City’s failure to issue an NOP for a Draft EIR to study  
2 the piecemealization of Valley Village, The City deprived the public of the  
3 opportunity to make meaningful comment on the projects in light of the prior,  
4 current and proposed construction in Valley Village and how it is altering the  
5 nature of Valley Village.

6  
7 114. Separate and apart from the need to remand The Project due to its  
8 failure to have a Draft EIR to study the historic nature of MMH, The Project  
9 needs to be remanded to The City to issue an NOP for a Draft EIR on the  
10 piecemealization issue.

11 115. SVV incorporates into this cause of action, the third cause of action,  
12 and requests that the MND be declared null and void on the grounds that it was  
13 not considered in public deliberation are required by the Brown Act and was the  
14 approval was due to a unlawful voting agreement so that there was no actual  
15 approval of The Project by the lead agency.

16  
17 116. In particular the unlawful voting agreement made all approvals of  
18 the Project (council file # 15-0963) null and void including the MND, and the  
19 Tract Map, and all other aspects of the September 2, 2015 purported approval  
20 by The City Council.

21  
22 117. SVV is entitled to reasonable attorney fees and costs under Code of  
23 Civil Procedure, § 1021.5 to the extent their action protects a public right or  
24 confers a benefit on the public over and above Petitioners’ personal interests.

25  
26 FIFTH CAUSE OF ACTION  
27 Violation of Statute, Codes, and Rules  
28 Against Defendants Joe Salem, Hermitage Enterpris, LLC

1           118. SVV hereby realleges and incorporates by reference into this cause  
2 of action, paragraphs 1 through 117, inclusive, of this Petition-Complaint.  
3 Where the prior allegations do not form required elements of this cause of  
4 action, they are informational to provide context to this cause of action.

5  
6           119. The developer, who variously identifies himself/itself as Joe Salem,  
7 Hermitage Enterpris (sic), LLC, made material misrepresentations of fact in  
8 seeking the demolition permit and it demolished MMH without proper approval  
9 and inspections under City Codes, *Health and Safety Code*, §§ 19827.5, 19828  
10 and under the rules of SCAQMD, especially Rule 1403.

11           120. The issuance of a permit does not vitiate violations in obtaining the  
12 permit or in carrying out the action authorized by the permit. LAMC §  
13 91.106.4.3.2. The developer carried out the demolition in ways which were  
14 contrary to the permits.

15  
16           121. The public record in this case sets forth in more detail the various  
17 violations of statutes, ordinances, and rules which were perpetrated by Salem  
18 and Hermitage Enterpris (sic) LLC. Pursuant to Code of Civil Procedure, §  
19 128.7, Plaintiff needs additional discovery to ascertain the ways in which the  
20 developer violated the permits, ordinances, and regulations.

21  
22           122. Due to the misinformation and violations of permits, all subsequent  
23 permits issued with respect to this property to Joe Salem, Hermitage Enterpris  
24 (sic), LLC are void, or will be void if issued prior to the final adjudication these  
25 issue in this litigation.

26  
27           123. SVV is entitled to reasonable attorney fees and costs under Code of  
28 Civil Procedure, § 1021.5 to the extent their action protects a public right or

1 confers a benefit on the public over and above Petitioners' personal interests.

2  
3 WHEREFORE SVV prays for relief as follows:

4  
5 First Cause of Action  
6 Cause of Action for Injunctive Relief  
7 Due to the Unlawful Voting Pact

8 1. SVV requests that This Court enjoin The City Council's voting  
9 procedure and mechanism; that this Court order The City and The City Council  
10 to devise a new voting system which guarantees that each councilmember uses  
11 his/her own discretion and that no voting agreement exists.

12  
13 2. SVV seeks a preliminary injunction and permanent injunction as to  
14 that part of the unlawful voting which permits the clerk to count non-votes as  
15 Yes votes.

16  
17 3. SVV seeks a preliminary injunction and permanent injunction as to  
18 that part of the unlawful voting which places CEQA items on the consent  
19 calendar

20  
21 4. SVV further prays for a preliminary injunctions and permanent  
22 injunction of the unlawful voting pact in all its variations as will be set forth in  
23 more detail in an application for permanent injunction.

24  
25 5. SVV further requests that This Court order that voting pact is  
26 unlawful as in violation of The Brown Act and Penal Code § 86.

27  
28 6. SVV further requests that This Court order that The City and the  
City Council present a series of Returns to the Court and to the Petitioner,

1 setting forth the proposed new voting process for City Hall and that the **first**  
2 Return be due (30) days from the date of the Writ and Judgement herein.

3  
4 7. That pursuant to Code of Civil Procedure, § 1021.5, this Court  
5 award Petitioner reasonable attorney fees and costs due to their conferring a  
6 substantial benefit on the community.

7  
8 8. That this Court provide such other and further relief as it deems just  
9 and proper.

10 Second Cause of Action  
11 Declaratory Relief  
12 Against The City and The City Council

13 1. SVV respectfully requests that this court declare that the City  
14 Council's voting procedure as set forth above is unlawful; SVV will request the  
15 Court's declaration address the separate portions of the unlawful voting pact and  
16 explain the basis each section is contrary to the law and which law each portion  
17 violates.

18 2. SVV respectfully requests that this Court declare that the City  
19 Council's approval of The Project was contrary to CEQA and contrary to The  
20 Brown Act and that the vote approving the Project is null and void.

21  
22 3. That pursuant to Code of Civil Procedure, § 1021.5, this Court  
23 award Petitioner reasonable attorney fees and costs due to their conferring a  
24 substantial benefit on the community.

25 4. That this Court provide such other and further relief as it deems just  
26 and proper.

27 Third Cause of Action  
28 and

1 Fourth Cause of Action  
2 CEQA Violations

3 1. SVV requests that separate and independent of any CEQA require-  
4 ment, this court's final Statement of Decision conform to the requirements of  
5 *Code of Civil Procedure*, § 632. SVV reserves the right to retract this "632  
6 Request" based upon the circumstances after the issuance of a tentative decision.  
7

8 2. SVV requests that the approval of the Project be nullified on the  
9 grounds that the City Council as lead agency did not exercise its independent  
10 discretion of not preparing an Draft Environmental Impact Report because the  
11 Project was placed on the consent calendar which by its nature precluded any  
12 review of the Project.

13 3. SVV requests that the approval of the Project be nullified on the  
14 grounds that the City Council as lead agency did not deliberate on the Project  
15 in public at the council session, as the Brown Act requires, because the Project  
16 was placed on the consent calendar which by its nature precluded any discussion  
17 of the Project.  
18

19 4. SVV requests that the approval of the Project be nullified on the  
20 grounds that the City Council has a rule that council members are not to vote  
21 against the project in another councilmember's district, which means there can  
22 be no public deliberation as required under the Brown Act as the decision to  
23 approve the problem has already been made in secret where no member of the  
24 public can witness the true way in which a project is approved.  
25

26 5. That this Court issue a Statement of Decision, Writ and Judgment  
27 which compels The City and The City Council to rescind their approval of The  
28 Project, along with any and all actions done to authorize The Project.

1           6.     That this Court issue a Statement of Decision, Writ and Judgment  
2 which compels The City and The City Council to rescind their approval of The  
3 Project, along with any and all subsequent actions by The City to implement The  
4 Project, including but not limited to the issuing of any permits. Any and all  
5 work or actions taken pursuant to a rescinded permit shall be halted and the  
6 Court shall consider and the Court may exercise the option to demolish the  
7 Project to the extent it has been constructed during litigation

8  
9           7.     That This Court enjoin The City from issuing any additional permits  
10 to Joe Salem and/or Hermitage Enterpris, LLC or their successors in interest to  
11 construct anything on the lot in question.

12  
13           8.     That this Court remand The Project go back to The City for the City  
14 to write a Draft EIR to study the historic nature of MMH and what, if any,  
15 ameliorative or punitive actions may be taken as a result of the failure to  
16 perform a Draft EIR and as a result of Joe Salem’s demolition of MMH.

17           9.     That this Court remand The Project back to The City for the City to  
18 write a Draft EIR to study piecemealization of the Valley Village Specific Plan;

19  
20           10.    That this Court order that The City issue a Notice of Preparation  
21 [NOP] so that the public and appropriate agencies may make their input and that  
22 the NOP enumerate certain goals including but not limited to: study the historic  
23 nature of MMH and to study the piecemealization which is adversely impacting  
24 VV Specific Plan

25  
26           11.    That this Court order that after a new Draft EIR has been written, the  
27 circulation time be sufficient to allow the appropriate Neighborhood Councils  
28 to comment on said Draft EIR under the applicable laws, ordinances and rules



1 allowing for the Neighborhood Councils to make comment on such matters.  
2 Neighborhood Councils need a minimum of sixty (60) days to comment as they  
3 have to first have their PLUM committees study the Draft EIR.

4  
5 12. That this Court order a series of Returns so that SVV, other  
6 members of the public, the Neighborhood Councils and the court may closely  
7 monitor The City's process so that The City does not unduly delay providing the  
8 Draft EIR.

9  
10 13. That pursuant to Code of Civil Procedure, § 1021.5, this Court  
11 award Petitioner reasonable attorney fees and costs due to their conferring a  
12 substantial benefit on the community.

13 14. That this Court provide such other and further relief as it deems just  
14 and proper.

15  
16 Fifth Cause of Action  
17 Violation of Statutes, Codes, Rules

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19 1. That this Court determine that the demolition of MMH was done  
20 contrary to statutes, codes, ordinances and rule as herein above set forth.

21  
22 2. That this Court order The City to revoke and all permits issued for  
23 The Project and that this Court enjoin The City and all its departments, agencies,  
24 and personnel from issuing any new permits until after the CEQA process  
25 including subsequent legal challenges has been completed.

26  
27 3. That pursuant to Code of Civil Procedure, § 1021.5, this Court  
28 award Petitioner reasonable attorney fees and costs due to their conferring a

1 substantial benefit on the community.

2  
3 4. That this Court provide such other and further relief as it deems just  
4 and proper.

5  
6 DATED: Tuesday, December 8, 2015

7  
8 Edward W. Pilot, A Professional Corp., and  
9 Richard S. MacNaughton, Esq.  
10 Co-counsel for Petitioner SaveValleyVillage

11 By

12   
13 Richard S. MacNaughton, Esq.

14 1916:VV:VV-P-2ndACver4

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